

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 19, 2007

STATE OF TENNESSEE v. KENNETH EDWARD HOLSAPPLE

Appeal from the Circuit Court for Marshall County
No. 16911 Robert Crigler, Judge

No. M2006-01683-CCA-R3-CD - Filed July 5, 2007

The Defendant, Kenneth Edward Holsapple, was convicted by a Marshall County jury of aggravated assault, assault, and reckless endangerment resulting from the attack upon his estranged wife and the stabbing of his wife's boyfriend. The trial court merged the convictions for aggravated assault and reckless endangerment. The Defendant was sentenced as a Range I, standard offender and received an effective sentence of three years in the Department of Correction. The Defendant's sole issue on appeal is whether the evidence was sufficient to support his conviction for aggravated assault beyond a reasonable doubt. Finding no error, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ROBERT W. WEDEMEYER, JJ., joined.

Michael Collins, Assistant Public Defender, Lewisburg, Tennessee (at trial), and Andrew Jackson Dearing, III, Assistant Public Defender, Shelbyville, Tennessee (on appeal), for the appellant, Kenneth Edward Holsapple.

Robert E. Cooper, Jr., Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Charles Crawford, District Attorney General and Weakley E. Barnard, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This case arises from an altercation between the Defendant and his estranged wife and her paramour on August 26, 2005, in Lewisburg. A Marshall County grand jury indicted the Defendant for two counts of aggravated assault against Raymond Balboa and one count of aggravated assault against Bridgett Holsapple. The case was tried before a jury on May 22, 2006, where the following testimony was given.

Mrs. Bridgett Holsapple testified that she and the Defendant moved into the residence at 563 Woodlawn in August of 2004, approximately one year before the altercation at issue in this case. Mrs. Holsapple testified that, prior to moving to this residence in Lewisburg, she and the Defendant had been separated and had lived apart at least three other times. Mrs. Holsapple stated that there had been “violence” and “[p]roblems” in her marriage.

Mrs. Holsapple testified that she met Mr. Raymond Balboa “a month or month and a half” before the August 26 incident. Mrs. Holsapple stated that she initially had a friendship with Mr. Balboa; ultimately, they became romantically involved. Mrs. Holsapple stated that, while she and the Defendant were separated, Mr. Balboa and his son moved in with her at the residence at 563 Woodlawn.

Mrs. Holsapple testified that, on the morning of August 26, 2005, she and Mr. Balboa were present at this residence. Mrs. Holsapple heard a noise that awakened and “startled” her. When Mrs. Holsapple went to investigate the source of the noise, she realized that the Defendant had entered her home, apparently by the use of his key, despite the fact that she had “propped a chair back under the door knob” to prevent his entrance. Mrs. Holsapple then relayed the subsequent events as follows:

We started to argue. He yelled at me that there wasn’t going to be, you know, two families in that household, that he was going to tell [the landlord] that there were two families in there and get me evicted. He told me I was his wife and he didn’t want me with anybody else. He did plead for us to stay married. I told him several times I wanted a divorce, I wasn’t in love with him, and he reached in his back pocket and pulled a knife out and [proceeded] to swing towards me.

Mrs. Holsapple testified that the Defendant came within “a foot and a half to two feet” from her and that she “backed up” and “yelled.” Mrs. Holsapple testified that she did not know how many times the Defendant swung the knife at her but stated that she knew “it was more than once” and “could have been” more than five times. Mrs. Holsapple stated that she was afraid for her safety and was concerned that she was going to be injured.

Mrs. Holsapple testified that, at this point, Mr. Balboa “got up out of bed” and “jumped between the two of us” Mrs. Holsapple stated that Mr. Balboa “got cut on his arm” and that she “saw blood hit the floor.” Mrs. Holsapple stated that the Defendant’s “eyes got kind of stunned looking like he might have been in shock or something, and he [ran] out the front door.” Mrs. Holsapple stated that Mr. Balboa’s arm was “bleeding constant[ly]” from the wound on his forearm. Mr. Balboa’s injury required medical attention and stitches.

On cross-examination, Mrs. Holsapple stated that she remained married to the Defendant after this incident. Mrs. Holsapple stated that, even though the Defendant told her that he wanted their marriage to continue, she was nonetheless afraid of him when he wielded the knife.

Mr. Raymond Balboa testified that he awoke on the morning of August 26 to hear the Defendant “arguing” with Mrs. Holsapple in a “threatening[,] loud” tone. Mr. Balboa stated that he knew the Defendant “wanted to work things out with her . . .” Mr. Balboa stated that he went to “make sure she was alright” and “make sure nothing physical happened.” Mr. Balboa stated that the Defendant “was mad that [he] was there” and “wanted [him] out of the house.” Mr. Balboa told the Defendant to “calm down” and to “talk it out.”

Mr. Balboa testified that the Defendant then “pulls out this knife” and “goes after her . . .” Mr. Balboa stated that he stuck his arm out and that the Defendant “didn’t swing the knife” at him but “just [came] down with a slash . . .” Mr. Balboa stated that the Defendant swung the knife “[j]ust once[,]” which was when he was stabbed. Mr. Balboa stated that he “grabbed [Mrs. Holsapple] . . . and pulled her behind [him].” Mr. Balboa stated that the Defendant then left the residence. Mr. Balboa also stated that his wound bled heavily and required stitches. Mr. Balboa stated that he still felt the effect of the wound at the time of trial and that his “hand goes numb.”

Officer Darrell Birdsong of the Lewisburg Police Department testified that he responded to the reported stabbing at the Holsapple residence. Officer Birdsong testified that Mr. Balboa was injured and had been bandaged at the scene. Officer Birdsong stated that he recovered a “bloody knife” from the front yard of the Holsapple residence. He said that Mrs. Holsapple had seen the Defendant discard the knife. Officer Birdsong stated that he then located and arrested the Defendant.

Detective Kevin Patin of the Lewisburg Police Department testified that he also responded to the reported stabbing at 563 Woodlawn. Detective Patin stated that he photographed the knife, the victim’s arm, and the blood on the floor of the residence. These photographs were admitted into evidence and presented to the jury.

Dr. Dennis McCracken testified that he was Mr. Balboa’s treating physician at Lewisburg Memorial Hospital emergency room. Dr. McCracken stated that the wound was a “four-centimeter laceration on the back side of his [left] forearm,” which was consistent with a knife-inflicted injury. Dr. McCracken testified that he had to use a “mattress suture” to treat the victim’s wounds. Dr. McCracken stated that this type of treatment was required only for the most serious wounds: [T]hose are for wounds that “are of a significant depth usually through the skin and through the next layer of tissue, which we call subcutaneous, perhaps down to muscle . . .” Dr. McCracken stated that the stitches to Mr. Balboa’s wound required “7 to 10 days” to effectively heal the injury.

On cross-examination, Dr. McCracken stated that Mr. Balboa’s wound likely did not result in muscular damage. Dr. McCracken stated that the wound did not require surgery, was not a “life-threatening, limb-threatening type of injury[,]” and would not result in “permanent impairment of the limb[,]” but was nonetheless “significant.”

Following the trial, the Defendant was convicted of aggravated assault¹ and reckless endangerment with a deadly weapon with regard to Mr. Balboa and assault with regard to Mrs. Holsapple. The trial court then merged the convictions of aggravated assault and reckless endangerment. The Defendant was sentenced as a Range I, standard offender and received an effective sentence of three years in the Department of Correction. This timely appeal followed.

Analysis

The Defendant's sole issue on appeal is whether the evidence was sufficient to support his conviction for aggravated assault. Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

The Defendant contends that "the evidence contained in the record is insufficient to have a jury convict him of Intentional Aggravated Assault." The Defendant alleges that he only attacked his wife, Mrs. Holsapple, and that therefore he cannot be convicted of aggravated assault against Mr. Balboa. Therefore, the Defendant states that his actions "did not arise to the definitions of

¹ The Defendant's conviction for aggravated assault was based upon Count Two of the indictment, which alleged that the Defendant did "intentionally and knowingly commit an assault . . . and did cause . . . Raymond Balboa to reasonably fear imminent bodily injury and [the Defendant] . . . intentionally or knowingly used or displayed a deadly weapon, to wit: a knife" See Tenn. Code Ann. § 39-13-102(1)(B). The Defendant was convicted of the lesser-included offense of reckless endangerment with regard to Count One of the indictment, which alleged that he did "intentionally, recklessly, or knowingly commit an assault . . . [and] did intentionally or knowingly cause serious bodily injury to another, to wit: Raymond Balboa" See Tenn. Code Ann. § 39-13-102(1)(A).

intentionally and knowingly in that [the Defendant's] conduct was directed toward his wife not Mr. Balboa as evidenced by the testimony of Mr. Balboa and Mrs. Holsapple." The State responds that "the jury could infer that Mr. Balboa reasonably feared imminent bodily injury at the time Defendant was attacking Mrs. Holsapple and that Defendant's conduct was knowing."

Under Tennessee Code Annotated section 39-13-102, a defendant may be found guilty of aggravated assault if he "[i]ntentionally or knowingly commits an assault" and "uses or displays a deadly weapon" Tenn. Code Ann. § 39-13-102(1)(B). Assault is defined as intentionally, knowingly, or recklessly "caus[ing] bodily injury to another" or "caus[ing] another to reasonably fear imminent bodily injury" Tenn. Code Ann. § 39-13-101(a)(1)-(2). Intentional "means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result" Tenn. Code Ann. § 39-11-106(18). Knowing "means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist" and "the person is aware that the conduct is reasonably certain to cause the result" Tenn. Code Ann. § 39-11-106(20).

The evidence in the record on appeal shows that the Defendant entered the Holsapple residence unexpectedly during a time when he was not residing at the home and the door had been locked and secured with a chair under the door knob. The proof shows that the Defendant was visibly upset and argued with his wife about the state of their marriage and her cohabitation with Mr. Balboa. The record reflects that Mr. Balboa entered the room and the Defendant pulled a knife from his pants pocket and swung it at least once in close proximity to both Mrs. Holsapple and Mr. Balboa. The record demonstrates, and the Defendant does not deny, that Mr. Balboa was injured in the altercation. Therefore, a reasonable jury could determine beyond a reasonable doubt that the Defendant was guilty of aggravated assault. The Defendant used a deadly weapon and caused both victims to reasonably fear imminent bodily injury.

The Defendant's argument that his "conduct was directed toward his wife not Mr. Balboa" is irrelevant. As the State correctly notes, our court has previously considered the question of whether a Defendant can be convicted of aggravated assault for placing an unintended victim in reasonable fear of imminent bodily injury. See State v. Craig Bryant, No. 02C01-9707-CR-00286, 1999 WL 5633 (Tenn. Crim. App., Jackson, Jan. 8, 1999), perm. to appeal denied, (Tenn. June 14, 1999). In Bryant, the defendant shot at his wife and the bullet hit another woman's cap, "knocking it off of her head." Id. at *3. We concluded that the evidence was sufficient to support the conviction for aggravated assault with respect to the unintended victim:

In making the argument that his conviction for aggravated assault may only be upheld by a finding of transferred intent, the Defendant fails to note the *mens era* of "knowing" in the statutes cited above. The aggravated assault statute plainly states that a Defendant may be found guilty of the crime of aggravated assault if he acts "intentionally *or knowingly*." [Tenn. Code Ann. § 39-13-102(a)(1)] (emphasis added). Because a conviction for aggravated assault does not require a finding of

specific intent, we need not address the question of whether the doctrine of transferred intent is applicable to the crime of aggravated assault. To sustain an aggravated assault conviction, it is enough for a jury to find that a defendant acted knowingly. As previously stated,

a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

Id. § 39-11-302(b).

Id. at *7-8.

Therefore, although a reasonable jury could have found that Mr. Balboa was indeed an intended or known victim, the evidence is sufficient for the Defendant's conviction for aggravated assault even if the Defendant actually intended only to place Mrs. Holsapple in fear of imminent bodily injury. As such, we conclude the evidence is sufficient for the jury to find the Defendant guilty beyond a reasonable doubt of an aggravated assault upon Mr. Balboa.

Conclusion

Based upon the foregoing reasoning and authorities, the judgment of the Marshall County Circuit Court is affirmed.

DAVID H. WELLES, JUDGE